PREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

NO. 1147

EDGAR W. MAXWELL, as Tax Assessor of Palm Beach County, Florida,
Appellant,
vs.
THE GOOD SAMARITAN HOSPITAL ASSOCIATION, INC., a non-profit Florida Corporation,
Appellee.

On Appeal from the Supreme Court of Florida

MOTION TO DISMISS

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The appellee moves the Court to dismiss the appeal on the grounds that the judgment of the Supreme Court of Florida rests on an adequate non-federal basis and that the appeal does not present a substantial federal question.

Statement of the Case

The appellee, Good Samaritan Hospital Association (hereinafter called Good Samaritan), was organized as a corporation not for profit in 1916 (Appellant's Appendix, p. 6a). Despite appellant's assertion that the "appellee bears very little resemblance to the good Samaritan of the gospel" (Appellant's Brief, p. 7), the appellant admitted in his brief, filed

in the District Court of Appeal for the State of Florida, Fourth District, that Good Samaritan does charitable work in excess of $200,000 annually.

Good Samaritan's application for exemption of its property from 1965 taxes was rejected by the appellee, tax assessor of the County of Palm Beach (hereinafter called tax assessor) and Good Samaritan filed suit to establish its right to the exemption (Appellant's Appendix, pp. 5a-12a).

The tax assessor now admits that Good Samaritan meets all the requirements of the Florida Statute* granting a tax exemption to hospitals and, except for an alleged policy of racial discrimination, "would otherwise be entitled to the tax exemption" (Appellant's Brief, p. 7).

Thus, as the sole justification for the denial of the tax exemption, the tax assessor alleged as an "affirmative defense" that

> ". . . plaintiff hospital has at all times material to this cause invidiously and arbitrarily denied admission to patients, solely on the basis of their being members of the Negro race, and denied the use of its hospital facilities to Negro physicians and dentists, solely on the basis of their being members of the Negro race."
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> Appellant's Appendix, p.13a

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*F.S. 192.06(13) exempts the properties of every hospital (1) licensed by the State Board of Health, (2) owned and operated by a Florida corporation not for profit, (3) which has been exempt from the payment of taxes to the United States upon the income derived from the operation of such hospital, (4) and used by such hospital for hospital purposes, provided that all income of such hospital, remaining after payment of the usual and necessary expenses of operation, including the payment of liens and encumbrances upon its property, shall be used exclusively for educational, charitable or scientific purposes, including the maintenance, improvement or expansion of its facilities.

and as justification for assessing Good Samaritan's property asserted that:

> ". . . to grant plaintiff exemption from ad valorem taxation . . . would amount to state action which deprives Negro taxpayers and citizens . . . of their property without due process of law and deprives them of equal protection of the laws, contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States."
>
> Appellant's Appendix, p. 13a

Good Samaritan challenged the sufficiency of the "affirmative defense" by a motion to strike which was granted by the trial judge who, "by way of dicta," pointed out that "the question sought to be raised . . . may be moot by reason of [Good Samaritan's] recent public declaration on the subject" (Appellant's Appendix, p. 15a).

The ruling striking the affirmative defense was affirmed by the District Court of Appeal of the State of Florida, Fourth District, on the ground that the tax assessor was an officer of the State and, as such, was obligated to carry out the provisions of the state law setting forth his duties and responsibilities. Thus, the District Court reasoned the tax assessor had "no authority to impose additional conditions or restrictions upon those shown to be entitled to the exemption as set forth in the statute" (Appellant's Appendix, p. 17a).

The Supreme Court of Florida granted the tax assessor's petition for a writ of certiorari because the decision of the District Court "affect[ed] a class of state officers" (Appellant's Appendix, pp. 18a-19a). The Court affirmed the decision of the District Court and ruled that the tax assessor's

> "plea did not controvert the validity of the statute, and that denial of the exemption for any reason other

than noncompliance with the statute would be an exercise of power in excess of that granted such officer."

Appellant's Appendix, p. 20a

Question Presented

The question presented is not whether a state can constitutionally grant a tax exemption to a not for profit corporation operating a hospital which did not, at the times material to this cause, admit Negro patients or allow Negro physicians and dentists to use its facilities, but solely

Whether the tax assessor, as an officer of the State, has standing to impose as a condition to allowing a statutory tax exemption of hospital property, that the hospital observe a policy of racial non-discrimination.

Argument

The judgment of the Supreme Court of Florida rests on an adequate non-federal basis

The tax assessor's position in the courts of Florida was that "he, as a tax assessor, an elected constitutional official of the state, could not participate in [the] unconstitutional act" of granting a tax exemption to a segregated hospital (Appellant's Brief, p. 8). His position, however, is contrary to a well settled principle of Florida law that an officer of the State cannot decline to perform a duty imposed upon him by law on the ground that the law contravenes the Constitution. *E.g., State ex rel. Atlantic Coast Line R. Co.* v. *State Board of Equalizers* (1922), 84 Fla. 592, 94 So. 681.

The tax assessor, relying on *Green* v. *City of Pensacola* (Fla. App. 1st Dist. 1959), 108 So.2d 897, and other Florida cases, argued below, as he does here, that he came within an exception to the above rule which permits a public officer

to question the constitutional validity of a statute affecting his lawful duties regarding the control and disbursement of public funds. Both the District Court of Appeal and the Supreme Court of Florida rejected that argument, holding that as a matter of Florida law the tax assessor had "no authority to impose additional conditions or restrictions upon those shown to be entitled to the exemption as set forth in the statute" and to take unto himself to do so "would be an exercise of power in excess of that granted such officer." (Appellant's Appendix, pp. 17a, 20a)

The appeal does not present a substantial federal question

The Supreme Court of Florida, having disposed of the case on the ground that the tax assessor did not have standing under Florida law to raise his "affirmative defense," did not reach the question of whether a state can constitutionally grant a tax exemption to a not for profit corporation operating a hospital which did not admit Negro patients or allow Negro physicians and dentists to use its facilities.* Nevertheless, the granting of a tax exemption to a private hospital, without more, does not so involve or identify the State with the activities of the hospital as to make its activities "state action" prohibited by the Fourteenth Amendment.

The Florida statute granting the tax exemption does not, on its face, require, sanction, encourage or relate in any way to the matter of racial discrimination. While several decisions have recognized that a tax exemption is a relevant consideration in determining what constitutes prohibited "state action" [*Burton* v. *Wilmington Parking Authority* 1961), 365

*The District Court of Appeal further held that since the tax assessor, in his official capacity, had no standing, his affirmative defense was an attempt to plead individual civil rights and "only persons actually deprived of their individual civil rights can seek redress of such rights" (Appellant's Appendix, p. 18a).

U.S. 715; *Eaton* v. *Grubbs* (4th Cir. 1964), 329 F.2d 710; *Commonwealth of Pennsylvania* v. *Brown* (E.D. Penn. 1967), 270 F.Supp. 782], no case has held or suggested that a tax exemption, by itself, imposes upon the recipient the restrictions of the Fourteenth Amendment. Just as the granting of a tax exemption to churches does not constitute the "establishment" of religion [*Murray* v. *Comptroller of Treasury* (1966), 241 Md. 383, 216 A.2d 897, *cert. denied*, 385 U.S. 816], so the granting of a tax exemption to hospitals does not constitute "state action" prohibited by the Fourteenth Amendment.

Assuming, however, that the granting of a tax exemption does amount to "state action," the appropriate relief is not to deny the exemption but rather to require an end to the discrimination. *Goldstein* v. *Mills* (S. Ct. 1945), 57 N.Y.S.2d 810, *affirmed*, (App. Div. 1946), 62 N.Y.S. 2d 619. And, an action to end the discrimination could not be maintained by the tax assessor since he is not a member of the class subject to the discrimination. *Bailey* v. *Patterson* (1962), 369 U.S. 31. *Eaton* v. *Grubbs* (4th Cir. 1964), 329 F.2d 710 and *Simkins* v. *Moses H. Cone Memorial Hospital* (4th Cir. 1963), 323 F.2d 959, were actions by Negro physicians and their patients who had been denied use of hospital facilities and the relief sought was an end to the discrimination.

Conclusion

For the foregoing reasons, the appeal should be dismissed.

Respectfully submitted,

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